

ASSEMBLY BILL

No. 1408

Introduced by Assembly Member Krekorian

February 27, 2009

An act to amend Section 66473.7 of the Government Code, relating to subdivision map approvals.

LEGISLATIVE COUNSEL'S DIGEST

AB 1408, as introduced, Krekorian. Subdivisions: Water Conservation Mitigation Fund.

(1) The Subdivision Map Act establishes a statewide regulatory framework for controlling the subdividing of land. The act generally requires a subdivider to submit, and have approved by the city, county, or city and county in which the land is situated, a tentative map. The act requires the legislative body of a city or county or the advisory agency, to the extent that it is authorized by local ordinance to approve, conditionally approve, or disapprove the tentative map, to include as a condition in any tentative map that includes a subdivision a requirement that a sufficient water supply be available. The act authorizes the legislative body to request written verification of sufficient water supply, and, when the written verification relies on projected water supplies that are not currently available to the public water system to provide a sufficient water supply to the subdivision, requires that the written verification as to those projected water supplies be based on prescribed elements.

This bill would establish a Water Conservation Mitigation Fund to be administered, as specified, by a public water system. A legislative body of a city or county or the advisory agency, to the extent that it is authorized by local ordinance to approve, conditionally approve, or

disapprove the tentative map, would be required to include as a condition in any tentative map that includes a subdivision a requirement that the subdivision have a sufficient water supply be available or that sufficient water supplies will be made available through a Water Conservation Mitigation Fund held by the public water system. The amount of funding needed for voluntary participation by the subdivision applicant in the Water Conservation Mitigation Fund would be required to be based on offsetting at least 100 percent of the projected water demand associated with the subdivision, as determined by the public water system. The public water system would be required to expend all funds in the Water Conservation Mitigation Fund on water conservation measures that will offset at least 100 percent of the projected demand associated with the subdivision, as specified. By adding to the duties of public water system officials, this bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 66473.7 of the Government Code is
2 amended to read:

3 66473.7. (a) For ~~the~~ purposes of this section, the following
4 definitions apply:

5 (1) "Subdivision" means a proposed residential development
6 of more than 500 dwelling units, except that for a public water
7 system that has fewer than 5,000 service connections, "subdivision"
8 means any proposed residential development that would account
9 for an increase of 10 percent or more in the number of the public
10 water system's existing service connections.

11 (2) "Sufficient water supply" means the total water supplies
12 available during normal, single-dry, and multiple-dry years within
13 a 20-year projection that will meet the projected demand associated
14 with the proposed subdivision, in addition to existing and planned

1 future uses, including, but not limited to, agricultural and industrial
2 uses. In determining “sufficient water supply,” all of the following
3 factors shall be considered:

4 (A) The availability of water supplies over a historical record
5 of at least 20 years.

6 (B) The applicability of an urban water shortage contingency
7 analysis prepared pursuant to Section 10632 of the Water Code
8 that includes actions to be undertaken by the public water system
9 in response to water supply shortages.

10 (C) The reduction in water supply allocated to a specific water
11 use sector pursuant to a resolution or ordinance adopted, or a
12 contract entered into, by the public water system, as long as that
13 resolution, ordinance, or contract does not conflict with Section
14 354 of the Water Code.

15 (D) The amount of water that the water supplier can reasonably
16 rely on receiving from other water supply projects, such as
17 conjunctive use, reclaimed water, water conservation, and water
18 transfer, including programs identified under federal, state, and
19 local water initiatives such as CALFED and Colorado River
20 tentative agreements, to the extent that these water supplies meet
21 the criteria of subdivision (d).

22 (3) “Public water system” means the water supplier that is, or
23 may become as a result of servicing the subdivision included in a
24 tentative map pursuant to subdivision (b), a public water system,
25 as defined in Section 10912 of the Water Code, that may supply
26 water for a subdivision.

27 (4) *“Projected water demand associated with the subdivision”*
28 *means the projected water demand associated with the subdivision*
29 *based on physical characteristics of the subdivision, including,*
30 *but not limited to, lot size and use, water using fixtures, current*
31 *local ordinances, statutory and regulatory requirements, and*
32 *permanently fixed extraordinary water conservation measures, as*
33 *determined by the public water system.*

34 (5) *“Water Conservation Mitigation Fund” means the fund used*
35 *to finance conservation measures that would achieve water savings*
36 *equivalent to the projected water demand associated with the*
37 *subdivision, as determined by the public water system.*

38 (b) (1) The legislative body of a city or county or the advisory
39 agency, to the extent that it is authorized by local ordinance to
40 approve, conditionally approve, or disapprove the tentative map,

1 shall include as a condition in any tentative map that includes a
2 subdivision a requirement that a sufficient water supply shall be
3 available *or that sufficient water supplies will be made available*
4 *through a Water Conservation Mitigation Fund held by the public*
5 *water system. The amount of funding needed for voluntary*
6 *participation by the subdivision applicant in the Water*
7 *Conservation Mitigation Fund shall be based on offsetting at least*
8 *100 percent of the projected water demand associated with the*
9 *subdivision, as determined by the public water system. Proof of*
10 the availability of a sufficient water supply *and, where applicable,*
11 *participation in the Water Conservation Mitigation Fund shall be*
12 requested by the subdivision applicant or local agency, at the
13 discretion of the local agency, and shall be based on written
14 verification from the applicable public water system within 90
15 days of a request.

16 (2) If the public water system fails to deliver the written
17 verification as required by this section, the local agency or any
18 other interested party may seek a writ of mandamus to compel the
19 public water system to comply.

20 (3) If the written verification provided by the applicable public
21 water system indicates that the public water system is unable to
22 provide a sufficient water supply that will meet the projected
23 demand associated with the proposed subdivision, then the local
24 agency may make a finding, after consideration of the written
25 verification by the applicable public water system, that additional
26 water supplies not accounted for by the public water system are,
27 or will be, available prior to completion of the subdivision that
28 will satisfy the requirements of this section. This finding shall be
29 made on the record and supported by substantial evidence.

30 (4) If the written verification is not provided by the public water
31 system, notwithstanding the local agency or other interested party
32 securing a writ of mandamus to compel compliance with this
33 section, then the local agency may make a finding that sufficient
34 water supplies are, or will be, available prior to completion of the
35 subdivision that will satisfy the requirements of this section. This
36 finding shall be made on the record and supported by substantial
37 evidence.

38 (5) *The public water system shall include in the written*
39 *verification of its assessment of the projected demand associated*
40 *with the subdivision its ability or inability to provide a sufficient*

1 water supply. If the public water system bases its assessment of
2 the projected water demand associated with the subdivision on
3 inclusion of permanently fixed extraordinary water conservation
4 measures, the assessment shall be conditioned with appropriate
5 measures to ensure that the extraordinary water conservation
6 measures will be retained and that actual long-term water demand
7 associated with the subdivision will be consistent with the water
8 demand projection. The conditions shall include adoption of legally
9 enforceable mechanisms, such as inclusion in covenants,
10 conditions, and restrictions. Water savings and demand projections
11 associated with permanently fixed extraordinary water
12 conservation measures may be calculated using the water savings
13 projections adopted by the California Urban Water Conservation
14 Council. Water savings and demand projections for measures for
15 which the California Urban Water Conservation Council does not
16 have adopted findings shall be based on substantial evidence in
17 the record.

18 (6) A public water system may impose a more stringent
19 requirement than provided for in this section.

20 (c) The applicable public water system's written verification of
21 its ability or inability to provide a sufficient water supply that will
22 meet the projected demand associated with the proposed
23 subdivision as required by subdivision (b) shall be supported by
24 substantial evidence. The substantial evidence may include, but is
25 not limited to, any of the following:

26 (1) The public water system's most recently adopted urban water
27 management plan adopted pursuant to Part 2.6 (commencing with
28 Section 10610) of Division 6 of the Water Code.

29 (2) A water supply assessment that was completed pursuant to
30 Part 2.10 (commencing with Section 10910) of Division 6 of the
31 Water Code.

32 (3) Other information relating to the sufficiency of the water
33 supply that contains analytical information that is substantially
34 similar to the assessment required by Section 10635 of the Water
35 Code.

36 (d) When the written verification pursuant to subdivision (b)
37 relies on projected water supplies that are not currently available
38 to the public water system, to provide a sufficient water supply to
39 the subdivision, the written verification as to those projected water

1 supplies shall be based on all of the following elements, to the
2 extent each is applicable:

3 (1) Written contracts or other proof of valid rights to the
4 identified water supply that identify the terms and conditions under
5 which the water will be available to serve the proposed subdivision.

6 (2) Copies of a capital outlay program for financing the delivery
7 of a sufficient water supply that has been adopted by the applicable
8 governing body.

9 (3) Securing of applicable federal, state, and local permits for
10 construction of necessary infrastructure associated with supplying
11 a sufficient water supply.

12 (4) Any necessary regulatory approvals that are required in order
13 to be able to convey or deliver a sufficient water supply to the
14 subdivision.

15 (e) If there is no public water system, the local agency shall
16 make a written finding of sufficient water supply based on the
17 evidentiary requirements of subdivisions (c) and (d) and identify
18 the mechanism for providing water to the subdivision.

19 (f) In making any findings or determinations under this section,
20 a local agency, or designated advisory agency, may work in
21 conjunction with the project applicant and the public water system
22 to secure water supplies sufficient to satisfy the demands of the
23 proposed subdivision. If the local agency secures water supplies
24 pursuant to this subdivision, which supplies are acceptable to and
25 approved by the governing body of the public water system as
26 suitable for delivery to customers, it shall work in conjunction
27 with the public water system to implement a plan to deliver that
28 water supply to satisfy the long-term demands of the proposed
29 subdivision.

30 (g) The written verification prepared under this section shall
31 also include a description, to the extent that data is reasonably
32 available based on published records maintained by federal and
33 state agencies, and public records of local agencies, of the
34 reasonably foreseeable impacts of the proposed subdivision on the
35 availability of water resources for agricultural and industrial uses
36 within the public water system's service area that are not currently
37 receiving water from the public water system but are utilizing the
38 same sources of water. To the extent that those reasonably
39 foreseeable impacts have previously been evaluated in a document
40 prepared pursuant to the California Environmental Quality Act

1 (Division 13 (commencing with Section 21000) of the Public
2 Resources Code) or the National Environmental Policy Act (Public
3 Law 91-190) for the proposed subdivision, the public water system
4 may utilize that information in preparing the written verification.

5 (h) Where a water supply for a proposed subdivision includes
6 groundwater, the public water system serving the proposed
7 subdivision shall evaluate, based on substantial evidence, the extent
8 to which it or the landowner has the right to extract the additional
9 groundwater needed to supply the proposed subdivision. Nothing
10 in this subdivision is intended to modify state law with regard to
11 groundwater rights.

12 (i) This section shall not apply to any residential project
13 proposed for a site that is within an urbanized area and has been
14 previously developed for urban uses, or where the immediate
15 contiguous properties surrounding the residential project site are,
16 or previously have been, developed for urban uses, or housing
17 projects that are exclusively for very low and low-income
18 households.

19 (j) The determinations made pursuant to this section shall be
20 consistent with the obligation of a public water system to grant a
21 priority for the provision of available and future water resources
22 or services to proposed housing developments that help meet the
23 city's or county's share of the regional housing needs for lower
24 income households, pursuant to Section 65589.7.

25 (k) The County of San Diego shall be deemed to comply with
26 this section if the Office of Planning and Research determines that
27 all of the following conditions have been met:

28 (1) A regional growth management strategy that provides for a
29 comprehensive regional strategy and a coordinated economic
30 development and growth management program has been developed
31 pursuant to Proposition C as approved by the voters of the County
32 of San Diego in November 1988, which required the development
33 of a regional growth management plan and directed the
34 establishment of a regional planning and growth management
35 review board.

36 (2) Each public water system, as defined in Section 10912 of
37 the Water Code, within the County of San Diego has adopted an
38 urban water management plan pursuant to Part 2.6 (commencing
39 with Section 10610) of the Water Code.

(3) The approval or conditional approval of tentative maps for subdivisions, as defined in this section, by the County of San Diego and the cities within the county requires written communications to be made by the public water system to the city or county, in a format and with content that is substantially similar to the requirements contained in this section, with regard to the availability of a sufficient water supply, or the reliance on projected water supplies to provide a sufficient water supply, for a proposed subdivision.

(l) Nothing in this section shall preclude the legislative body of a city or county, or the designated advisory agency, at the request of the applicant, from making the determinations required in this section earlier than required pursuant to subdivision (b).

(m) Nothing in this section shall be construed to create a right or entitlement to water service or any specific level of water service.

(n) Nothing in this section is intended to change existing law concerning a public water system's obligation to provide water service to its existing customers or to any potential future customers.

(o) Any action challenging the sufficiency of the public water system's written verification of a sufficient water supply shall be governed by Section 66499.37.

(p) When the written verification pursuant to subdivision (b) relies on voluntary participation in the Water Conservation Mitigation Fund held by the public water system, the written verification shall include an assessment by the public water system of funds needed for the public water system to implement water conservation measures that offset at least 100 percent of the projected water demand associated with the subdivision and proof that the funds have been voluntarily deposited in a Water Conservation Mitigation Fund held by the public water system. The public water system's assessment of funds shall include identification and quantification of the water savings resulting from the water conservation measures that the public water system will implement to offset at least 100 percent of the projected water demand associated with the subdivision.

(q) For purposes of a Water Conservation Mitigation Fund held by a public water system, the public water system shall be required to expend all funds from the Water Conservation Mitigation Fund

1 on water conservation measures that will offset at least 100 percent
2 of the projected demand associated with the subdivision. The
3 expenditures may be made within the subdivision or elsewhere
4 within the service area of the public water supplier, at its
5 discretion.

6 (1) Not less than ____percent of the proceeds from the Water
7 Conservation Mitigation Fund shall be directed to water
8 conservation programs in any disadvantaged community, as
9 defined in Section 75005 of the Public Resources Code, within the
10 service area of the public water system.

11 (2) The public water system shall be prohibited from using any
12 funds from the Water Conservation Mitigation Fund to supplant
13 funding for water conservation programs required by existing law
14 or paid for by existing customers through water rates and
15 surcharges.

16 (3) The public water system shall be prohibited from using any
17 funds from the Water Conservation Mitigation Fund to comply
18 with requirements of the California Urban Water Conservation
19 Council Memorandum of Understanding, except where funds are
20 directed to disadvantaged communities.

21 (4) The governing body of a public water system shall determine,
22 after a public hearing, that the funds deposited in the Water
23 Conservation Mitigation Fund do not supplant funds for water
24 conservation programs required by existing law, paid for by
25 existing customers through water rates and surcharges, or that
26 are required for participation in the California Urban Water
27 Conservation Council.

28 (5) Actions for which the public water supplier may use water
29 conservation mitigation funding must be quantifiable, verifiable,
30 have a planned completion date that is concurrent with when the
31 buildings within the subdivision will require service, and have a
32 life expectancy of at least 20 years. These actions include all of
33 the following:

34 (A) High-efficiency toilet replacements.

35 (B) Faucet aerators.

36 (C) Prerinse spray valves.

37 (D) High-efficiency washing machines.

38 (E) Weather-based “smart” timers.

39 (F) Rotator spray heads.

40 (G) Cash for grass programs.

- 1 (H) *Landscape rebates.*
- 2 (I) *Single-family high water use notifications.*
- 3 (J) *Home-leak detection kits.*
- 4 (K) *Water brooms.*
- 5 (L) *High-efficiency commercial dishwashers.*
- 6 (M) *Cooling tower conductivity controllers.*
- 7 (N) *X-ray film processor recirculation systems.*
- 8 (O) *Connectionless food steamers.*
- 9 (P) *Steam sterilizers.*
- 10 (Q) *Dry vacuum pumps.*
- 11 (R) *Commercial ice machine.*
- 12 (S) *School toilet leak detection.*
- 13 (T) *Water recycling.*
- 14 (U) *Advanced (automated) metering systems.*
- 15 (V) *Stormwater capture, graywater systems, and groundwater*
- 16 *treatment.*
- 17 (W) *Other water efficiency measures for which substantial*
- 18 *evidence demonstrates the measure will achieve a quantifiable*
- 19 *reduction in demand.*
- 20 (r) *Pursuant to Part 2.6 (commencing with Section 10610) of*
- 21 *Division 6 of the Water Code, the public water system shall do all*
- 22 *of the following:*
- 23 (1) *Document all expenditures from the water conservation*
- 24 *mitigation funding, if the public water system holds a Water*
- 25 *Conservation Mitigation Fund, in its Urban Water Management*
- 26 *Plan and confirm that the water conservation mitigation funding*
- 27 *was not used to supplant funding for water conservation programs*
- 28 *required by existing law, paid for by existing customers through*
- 29 *water rates and surcharges, or that are required for participation*
- 30 *in the California Urban Water Conservation Council.*
- 31 (2) *Document the measured annual water use of each*
- 32 *subdivision pursuant to this section.*
- 33 (3) *Calculate the water savings attributable to the water*
- 34 *conservation measures financed by the water conservation*
- 35 *mitigation funding from each subdivision.*
- 36 (4) *In the event that the calculated water savings in subdivision*
- 37 *(q) do not equal or exceed the measured water demand in*
- 38 *subdivision (b) over a five-year period, the public water system*
- 39 *shall include in its Urban Water Management Plan a schedule of*

1 *actions designed to achieve the savings necessary to offset 100*
2 *percent of the actual demand of the subdivision.*

3 SEC. 2. If the Commission on State Mandates determines that
4 this act contains costs mandated by the state, reimbursement to
5 local agencies and school districts for those costs shall be made
6 pursuant to Part 7 (commencing with Section 17500) of Division
7 4 of Title 2 of the Government Code.

O